

Before the
UNITED STATES COPYRIGHT BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(Phonorecords IV)

Docket No. 21–CRB–0001–PR (2023–2027)

**COPYRIGHT OWNERS’ MOTION TO COMPEL PRODUCTION OF REBUTTAL
DISCOVERY DOCUMENTS AND INFORMATION FROM THE SERVICES**

National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Association International (“NSAI”) (collectively, “COs”) submit this motion to compel Amazon.com Services LLC (“Amazon”), Apple Inc. (“Apple”), Pandora Media, LLC (“Pandora”), and Spotify USA Inc. (“Spotify”) (collectively, the “Services”) to produce certain documents and information related to their written rebuttal statements (“WRS”) (the “Motion”).

On May 3, 2022, COs served separately on each Service COs’ First Set of Rebuttal Requests for Production of Documents (collectively, “COs’ Rebuttal RFPs”). On May 3, 2022, COs also served on the Services COs’ Fourth Set of Interrogatories (“COs’ Rebuttal Interrogatories,” and together with COs’ Rebuttal RFPs, “COs’ Rebuttal Requests”). On May 13, 2022, each Service served their Responses and Objections (“R&Os”) to COs’ Rebuttal Requests.¹

COs’ Rebuttal Requests at issue fall into two categories: (1) requests seeking documents and information that are directly related to Amazon’s and Spotify’s WRS, but which Amazon and Spotify have refused to produce without justification; and (2) requests seeking documents and

¹ The relevant COs’ Rebuttal Requests, and the Services’ respective Responses and Objections thereto, are annexed to the Declaration of Kaveri Arora as Ex. 1 (Amazon), Ex. 2 (Apple), Ex. 3 (Pandora), and Ex. 4 (Spotify).

information the Services agreed to produce, but have not done so.² As explained herein, COs are entitled to the requested documents and information and respectfully request that their Motion be granted.

LEGAL STANDARD

Pursuant to 37 C.F.R. § 351.5(b)(1), a participant in a proceeding “may request of an opposing participant nonprivileged documents that are directly related to the . . . written rebuttal statement . . . of that participant.” This provision also requires that objections to requests be resolved by a motion or request to compel production made to the Copyright Royalty Judges.

To be discoverable, a document need not be specifically relied upon by or referenced in a participant’s witness testimony. *Discovery Order 4*, Docket No. 14-CRB-0001-WR (2016-20) at 2 (Jan. 15, 2015) (“[A] lack [of] specific reliance on a particular document does not preclude its discovery.”); *Discovery Order 9*, Docket No. 14-CRB-0001-WR (2016-20) at 3 (Jan. 15, 2015) (“Documents need not be referenced, relied upon or considered in a participant’s [written testimony] to be ‘directly related.’”). “Documents directly related to a topic that a participant has put ‘in issue’ or made ‘a part of its case’ in its written testimony may also be ‘directly related’ to the [written testimony] and thus discoverable.” *Id.*

The discovery standard for interrogatories is even broader. A participant may through interrogatories obtain nonprivileged information “regarding any matter...that is relevant to the claim or defense of any party.” 37 C.F.R. § 351.5(b)(2).

² In those instances where the particular Service has agreed to produce but has not yet produced, because the Judges’ schedule requires motions to compel to be filed by May 24, 2022, this motion is protective and, upon production in accordance with such Service’s agreement, will be withdrawn as to such Service or such specific Rebuttal RFP or interrogatory.

I. THE REQUESTED DOCUMENTS AND INFORMATION ARE DISCOVERABLE

A. COs' Rebuttal Requests to which Amazon and Spotify have Refused Production Are Directly Related to Amazon's or Spotify's WRS and/or a Claim or Defense in this Proceeding

In Amazon's and Spotify's R&Os, Amazon and Spotify refused to produce documents and information responsive to certain of the COs' Rebuttal Requests; COs were unable to reach agreement with Amazon and Spotify concerning these Rebuttal Requests during their meet and confers. The Rebuttal Requests to which Amazon and Spotify have refused production are attached to the Arora Declaration as Ex. 5 (Amazon); and Ex. 6 (Spotify).

The tables in Exhibits 5 and 6: (1) identify the Rebuttal Requests at issue; (2) state Amazon's or Spotify's objections and responses to the Rebuttal Requests; (3) set forth COs' arguments concerning how the Rebuttal Requests are directly related to Amazon's or Spotify's WRS; and (4) identify relevant citations to Amazon's or Spotify's WRS in support of COs' positions.³ The applicable time period for all of the requests (the "Relevant Time Period") is January 1, 2017 to present. For the reasons stated in Exhibits 5 and 6, COs respectfully request that their Motion be granted.

B. The Services Have Not Produced Documents and Information They Agreed to Produce

In the Services' R&Os, and through the meet and confer process, each Service agreed to produce documents responsive to certain Rebuttal RFPs, but have failed to do so in their productions. The Rebuttal Requests to which the Services agreed to produce documents (and, in

³ As to Pandora and Apple, this motion is addressed solely to their failure to comply with their agreement to produce certain documents. Pandora and COs and Apple and COs resolved their disagreements regarding Pandora's and Apple's stated objections; however, Pandora and Apple appear to have produced either no responsive documents and information, or a deficient set of documents and information, in response to certain of COs' Rebuttal Requests.

PUBLIC VERSION

some cases, narrowed by agreement of COs and the Services during meet and confers) are annexed to the Arora Decl. as Ex. 7 (Amazon); Ex. 8 (Apple); Ex. 9 (Pandora); and Ex. 10 (Spotify). The issue as to these Rebuttal Requests is not whether they are directly related to the Services' WRSs, which they are, but is one of compliance.

Again, because the Judges' schedule imposes a deadline to file Rebuttal Discovery Motions on May 24, 2022, in order to protect their rights in the event of non-production or incomplete production, which will not be known until after May 24, 2022, COs have no alternative but to also move with respect to requests identified in Exhibits 7 through 10, as narrowed by COs during the meet and confer discussions. Should any of the Services produce documents or information responsive to these Rebuttal Requests prior to the Board's determination of this Motion, or confirm that it has not located any documents responsive to these Rebuttal Requests, COs will so advise the Board that the Motion is moot in respect to these Rebuttal Requests.⁴

CONCLUSION

COs respectfully request that the Judges order the Services to produce the documents and information discussed herein and outlined in the accompanying Proposed Order.

Dated: May 24, 2022

PRYOR CASHMAN LLP

By: /s/ Kaveri Arora
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⁴ At 7:58 p.m. on May 24, 2022, the deadline for making this Motion, Spotify made a supplemental production, which could neither be processed nor reviewed in advance of the deadline.

PUBLIC VERSION

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Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(Phonorecords IV)

Docket No. 12–CRB–0001–PR (2023–2027)

DECLARATION OF KAVERI ARORA
(On Behalf of Copyright Owners)

1. I am an attorney at Pryor Cashman LLP, counsel for the National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Associations International (“NSAI,” together with NMPA, “Copyright Owners” or “COs”) in the above-captioned proceeding (the “Proceeding”).

2. I submit this declaration in connection with Copyright Owners’ Motion to Compel Production of Rebuttal Discovery Documents and Information from the Services (the “Motion”). I am authorized by COs to submit this declaration on their behalf, and I am fully familiar with the facts and circumstances set forth herein.

3. Annexed as **Exhibit 1** to this Declaration is a true and correct copy of the following documents:

- a) COs’ First Set of Rebuttal Requests for Production of Documents (“Rebuttal RFPs”) to Amazon and Amazon’s Responses and Objections (“R&Os”) thereto;

4. Annexed hereto as **Exhibit 2** is a bookmarked compilation of true and correct copies of the following documents:

- a) COs' First Set of Rebuttal RFPs to Apple and Apple's R&Os thereto; and
 - b) COs' Fourth Set of Interrogatories to all Services and Apple's R&Os thereto.
5. Annexed hereto as **Exhibit 3** is a true and correct copy of the following documents:
- a) COs' First Set of Rebuttal RFPs to Pandora and Pandora's R&Os thereto.
6. Annexed hereto as **Exhibit 4** is a bookmarked compilation of true and correct copies of the following documents:
- a) COs' First Set of Rebuttal RFPs to Spotify and Spotify's R&Os thereto; and
 - b) COs' Fourth Set of Interrogatories to all Services and relevant excerpts of Spotify's R&Os thereto.
7. Annexed hereto as **Exhibit 5** is a table identifying COs' Rebuttal Requests to Amazon, to which Amazon has refused production. The table in Exhibit 5: (1) identifies the Rebuttal Requests at issue; (2) states Amazon's objections and responses to the Rebuttal Requests; (3) sets forth COs' argument concerning how the Rebuttal Requests are directly related to Amazon's Written Rebuttal Statement ("WRS"); and (4) identifies relevant citations to Amazon's WRS in support of COs' positions.
8. Annexed hereto as **Exhibit 6** is a table identifying COs' Rebuttal Requests to Spotify, to which Spotify has refused production. The table in Exhibit 6: (1) identifies the Rebuttal Requests at issue; (2) states Spotify's objections and responses to the Rebuttal Requests; (3) sets forth COs' argument concerning how the Rebuttal Requests are directly related to Spotify's WRS; and (4) identifies relevant citations to Spotify's WRS in support of COs' positions.
9. Annexed hereto as **Exhibit 7** is a table identifying COs' Rebuttal Requests to Amazon, to which Amazon has agreed to produce documents, but has not done so.
10. Annexed hereto as **Exhibit 8** is a table identifying COs' Rebuttal Requests to Apple, to which Apple has agreed to produce documents, but has not done so.

11. Annexed hereto as **Exhibit 9** is a table identifying COs' Rebuttal Requests to Pandora, to which Pandora has agreed to produce documents, but has not done so.

12. Annexed hereto as **Exhibit 10** is a table identifying COs' Rebuttal Requests to Spotify, to which Spotify has agreed to produce documents, but has not done so.

13. On April 22, 2022, the COs and the Services each filed their respective Written Rebuttal Statements.

14. The rebuttal discovery period in this proceeding commenced on April 23, 2022. *See Order Following April 7, 2022 Status Conference*, eCRB Docket No. 26435 (April 8, 2022).

15. On May 3, 2022, COs served Rebuttal RFPs on each of the Services, and each Service timely served its respective R&Os to the Rebuttal RFPs directed to it.

16. On May 3, 2022, COs also served their Fourth Set of Interrogatories on all of the Services. Each of the Services timely served its respective R&Os to the Interrogatories.

17. COs met and conferred separately with the Services regarding COs' discovery requests on May 17, 2022.

18. Despite these discussions, COs and some of the Services still have a disagreement with respect to several Rebuttal RFPs and Interrogatories propounded by the COs as to which such Service(s) have made clear they refuse to produce responsive documents or information. Specifically, COs' motion to compel concerns the RFPs and Interrogatories identified in Exhibits 5 through 10, annexed hereto and described above, which set forth the text of each RFP and Interrogatory at issue.

19. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 24, 2022
New York, New York

/s/ Kaveri Arora

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EXHIBIT 1

RESTRICTED

EXHIBIT 2

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EXHIBIT 3

RESTRICTED

EXHIBIT 4

RESTRICTED

EXHIBIT 5

In Amazon's R&Os, Amazon refused to produce documents responsive to the following Requests, and the participants were unable to reach agreement during their meet and confer on the following Rebuttal RFPs:


Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
R-15	Documents sufficient to show, on a monthly basis, the amount of revenue You received from spending on Your products and services by (a) Prime Music users, (b) Prime members who are not Prime Music users and (c) non-Prime members. (See, e.g., Leslie WRT ¶ 13)	Amazon objects to Request No. R-15 on the ground that it calls for the production of information that does not "directly relate[]" to Amazon's Written Direct Statement. 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5(b)(1). Instead, such information is, at most, "indirectly or tangentially related" to Amazon's Written Direct Statement. Order Granting in Part and Denying in Part Services' Omnibus Motion to Compel SoundExchange to Produce Documents at 4, Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015). Amazon further objects to Request No. R-15 on the ground that it is overbroad, unduly burdensome, and	The subject matter at the heart of the rebuttal testimony by Amazon's Chief Digital Economist for digital streaming [REDACTED] Specifically, for example, Prof. Leslie testifies that [REDACTED]	See, e.g., Leslie WRT ¶ 13 [REDACTED] ; ¶ 29 ([REDACTED])

Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
		disproportionate to the needs of this proceeding. Moreover, the Copyright Royalty Board has already denied discovery into "the amount of revenue [Amazon] received from spending on [its] products and services by (a) Prime Music users, (b) Prime members who are not Prime Music users and (c) non-Prime members." See Order Granting in Part and Denying in Part Copyright Owners' Motion to Compel Amazon Financial Documents and Denying Amazon's Companion "Conditional" Motion (Apr. 19, 2022). Amazon objects to Request No. R-15 in its entirety and does not intend to produce documents in response to Request No. R-15.	[REDACTED]	
R-30	All Analysis [REDACTED]	Amazon objects to Request No. R-30 on the ground that it is overbroad, unduly burdensome, and	Amazon's witnesses testify on rebuttal about [REDACTED]	<i>See e.g., Marx WRT ¶ 195</i> ([REDACTED])

Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
	[REDACTED]. (See, e.g., Marx ¶ 195; Duffett-Smith WRT ¶¶ 30, 53)	disproportionate to the needs of this proceeding. Amazon further objects to Request No. R-30 on the ground that it is an impermissibly nonspecific Request. Amazon objects to Request No. R-30 in its entirety and does not intend to produce documents in response to Request No. R-30.	[REDACTED]	[REDACTED]; Duffett-Smith WRT ¶ 30, 53 (claiming a per -play rate does not require any other rate prong); Amz. Ex. 219 ([REDACTED]) [REDACTED] AMZN_Phono IV_00015963), at AMZN_Phono IV 00015970 [REDACTED] at AMZN_Phono IV 00015975 [REDACTED].

Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
R-38	Documents sufficient to show all revenues underlying [REDACTED], and all costs and allocations that [REDACTED] (See, e.g., Leslie WRT ¶¶ 27 & 28).	Amazon objects to Request No. R-38 on the ground that it calls for the production of information that does not “directly relate[]” to Amazon’s Written Direct Statement. 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5(b)(1). Instead, such information is, at most, “indirectly or tangentially related” to Amazon’s Written Direct Statement. Order Granting in Part and Denying in Part Services’ Omnibus Motion to Compel SoundExchange to Produce Documents at 4,	Prof. Leslie testifies at length on rebuttal about [REDACTED]	See e.g., Leslie WRT ¶¶ 27, 28 [REDACTED]

¹ COs were unable to discuss this reasoning fully with Amazon during the May 17, 2022 meet and confer, as Amazon cut short COs’ explanation in order to ask COs [REDACTED] Amazon followed up by email stating that it would not search for documents responsive to R-30. For clarity, [REDACTED]

Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
		Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015). Amazon further objects to Request No. R-38 on the ground that it is overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Amazon objects to Request No. R-38 in its entirety and does not intend to produce documents in response to Request No. R-38.		
R-2	The complete, unredacted version of each of Your Exhibits 207-318. ²	Amazon objects to Request No. R-2 on the ground that it seeks privileged or confidential business information that is outside the scope of permissible discovery in this proceeding. Specifically, in addition to privileged information, Request No. R-2 calls for the production of	On March 30, 2022, COs moved to compel Amazon to produce unredacted documents and challenged Amazon's attempt to claw back unredacted documents. That motion, which remains undecided, sets forth COs' arguments as to the impropriety of the redactions in Amazon's exhibits. (<i>See Copyright Owners Motion to Compel Amazon to Produce Unredacted Documents</i>	<i>See Copyright Owners Motion to Compel Amazon to Produce Unredacted Documents and Challenge to Amazon's Clawback Notice</i> , eCRB Dkt. 26407)

² Amazon and COs anticipate that they will be able to come to an agreement on what, if anything, Amazon needs to produce in response to RFP R-2, once the Judges issue an order on COs' Redaction Motion.

Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
		<p>information that does not “directly relate[]” to Amazon’s Written Direct Statement. 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5(b)(1). Instead, such information is, at most, “indirectly or tangentially related” to Amazon’s Written Direct Statement. Order Granting in Part and Denying in Part Services’ Omnibus Motion to Compel SoundExchange to Produce Documents at 4, Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015). Amazon further objects to Request No. R-2 on the ground that it is overbroad, unduly burdensome, and disproportionate to the needs of this proceeding. Amazon objects to Request No. R-2 in its entirety and does not intend to produce</p>	<p><i>and Challenge to Amazon’s Clawback Notice</i>, eCRB Dkt. 26407 (“COs’ Redaction Motion”))</p>	

Request No.	COs' Rebuttal RFPs	Amazon's Objection(s)	COs' Response to Amazon's Objection(s)	Citations
		documents in response to Request No. R-2.		

EXHIBIT 6

In the Spotify R&Os, Spotify refused to produce documents responsive to the following requests and interrogatory and/or improperly limited its response, and the participants were unable to reach agreement during their meet and confers, notwithstanding COs' compromise offers with regard to certain of the RFPs.

Request No.	COs' Rebuttal Request	Spotify's Objection(s)	COs' Response to Spotify's Objection(s)	Citations
Spotify R-9	All Analysis concerning Spotify's "long-term viability," as that phrase is used in Your WRS.	Spotify objects to the extent this request seeks privileged information. Spotify will produce responsive, non-privileged documents concerning Spotify's "long-term viability" as it relates to Copyright Owners' proposal not already produced that it locates after a reasonably diligent search. For the avoidance of doubt, Spotify will not reproduce all responsive documents already produced or attached to the WRT of Winston Wu.	Spotify's limitation to documents "concerning Spotify's 'long-term viability' <i>as it relates to Copyright Owners' proposal</i> " (emphasis added) is far too narrow and would capture only documents prepared specifically in connection with this proceeding, which are likely to be self-serving or over which Spotify is likely to claim privilege. Spotify has put at issue its own analysis of what its "long-term viability" supposedly requires. Spotify cannot claim that [REDACTED] and then not produce its ordinary course analysis concerning what its "viability" entails.	<i>See e.g., Kaefer WRT ¶¶ 4 ([REDACTED])</i> , 20 ([REDACTED]); Intro Memo at 18.
Spotify R-12	Documents sufficient to show how Your non-content costs are allocated to the U.S. and allocated between	This RFP seeks information not directly related to Spotify's Written Rebuttal Statement, and as such is outside the bounds of	This RFP seeks information directly related to statements Spotify's rebuttal witnesses have made about Spotify's non-content costs. Through the participants' meet and confers, Spotify	<i>See e.g., Farrell WRT ¶¶ 127 n.190, 132 n.197 ("My analysis of the P&L statements of [REDACTED]</i>

	different offerings or business divisions.	rebuttal discovery. Further, the meaning of the term “allocated” is vague and ambiguous. Spotify is willing to meet and confer with Copyright Owners regarding limitations and parameters to this RFP sufficient to make it reasonable.	asserted it had served an interrogatory response with “a narrative response,” and had submitted testimony, providing information related to this RFP, as well as produced documents showing “actual allocation amounts.” Yet Spotify has not claimed it has produced documents showing <i>how</i> its non-content costs are “allocated to the U.S. and allocated between different offerings or business divisions”; and it has admitted in e-mails that such calculations [REDACTED].”	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]”); Wu WRT ¶¶ 9 ([REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]), 11 (same); Kaefer WRT ¶ 8 ([REDACTED] [REDACTED] [REDACTED]).
Spotify R-23	All Analysis concerning changes You have contemplated or implemented to the Pricing, availability, content, functionality, features or operation of any of Your Eligible Digital Music Services as a result of [REDACTED] in any Agreement(s).	This RFP is overbroad and unduly burdensome, in particular because it seeks “all” analysis of both “contemplated” and implemented changes to a broad swath of general categories. Further, the meaning of the terms “concerning,” “contemplated,” “availability,” “content,” “functionality,” “features,” and “operation” are vague and ambiguous.	This RFP is directly related to rebuttal testimony Spotify submitted concerning COs’ per-play rate. (<i>See</i> citations in next column.) Additionally, while Spotify’s objection is focused on this RFP’s request for “Pricing”-related information, Spotify appears to also be refusing to produce any documents regarding the requested documents insofar as they relate to “availability, content, functionality, features or operation of Your Eligible Digital Music Services.”	<i>See e.g.</i> , Kaefer WRT ¶¶ 2, 26-34 ([REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]); Farrell WRT ¶ 107 n.162; Wu WRT ¶ 16 n.28, 18 (claiming a per-play prong “ [REDACTED] [REDACTED]).

		Additionally, Spotify objects to the extent this request seeks privileged information. Additionally, this RFP seeks information not directly related to Spotify's Written Rebuttal Statement, in particular because it seeks information to "contemplated" pricing, and as such is outside the bounds of rebuttal discovery. See Pricing and Bundling Order at Appendix A. Spotify will produce responsive, non-privileged documents not already produced after a reasonably diligent search.		([REDACTED]); Bonavia WRT ¶¶ 4, 13, 29.
Spotify R-24	All Analysis concerning changes You have contemplated or implemented to the Pricing, availability, content, functionality, features or operation of any of Your Eligible Digital Music Services as a result of actual or contemplated changes to the royalty rates that	This RFP is overbroad and unduly burdensome, in particular because it seeks "all" analysis of both "contemplated" and implemented changes to a broad swath of general categories. Further, the meaning of the terms "concerning," "contemplated," "availability," "content," "functionality," "features,"	This RFP is directly related to rebuttal testimony Spotify submitted concerning Spotify's alleged responses to COs' rate proposal and the alleged impact thereof. (See citations in next column.) Additionally, while Spotify's objection is focused on this RFP's request for "Pricing"-related information, Spotify appears to also be refusing to produce any documents regarding the requested documents insofar	See e.g., Kaefer WRT ¶¶ 2-4, 12, 14-20, 28-31, 35-38, 41-43, 67-69 ([REDACTED]) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

	You pay to sound recording or musical work licensors.	and “operation” are vague and ambiguous. Additionally, Spotify objects to the extent this request seeks privileged information. Also, this RFP seeks information not directly related to Spotify’s Written Rebuttal Statement, in particular because it seeks information to “contemplated” pricing, and as such is outside the bounds of rebuttal discovery. <i>See</i> Pricing and Bundling Order at Appendix A. Spotify has already produced analyses concerning pricing changes implemented and will not produce any additional documents. Spotify will not produce documents or analyses concerning Spotify’s so-called “contemplated” prices that were not implemented.	as they relate to “availability, content, functionality, features or operation of Your Eligible Digital Music Services.”	<p>_____); Wu WRT ¶¶ 12, 17-18 (_____ _____ _____ _____ _____).</p>
Spotify R-42	All Analysis concerning the addition or implementation of a HiFi or high quality	This RFP is overbroad and unduly burdensome, in particular because it seeks “all” analysis. Further,	Spotify’s claim that this RFP “seeks information not directly related to Spotify’s Written Rebuttal Statement” is belied by	<p><i>See e.g.</i>, Tschollar WRT ¶ 21 (stating “_____ _____ _____”).</p>

	audio tier or feature to any of Your Eligible Digital Music Services.	Spotify objects to the extent this request seeks privileged information. Additionally, this RFP seeks information not directly related to Spotify's Written Rebuttal Statement, and as such is outside the bounds of rebuttal discovery. Spotify will not produce documents.	Ms. Tschollar's testimony, to which this RFP is directly related.	[REDACTED]
Spotify R-58	Documents sufficient to show, on a monthly basis, the percentage of Spotify subscribers who have active streams of a single licensor's catalog (sound recordings or musical works) that are [REDACTED], broken down by the respective single	This RFP is overbroad and unduly burdensome to the extent it requests information in a form not maintained in the ordinary course of business. Further, Spotify objects to the extent this RFP requests Spotify create new documents. Additionally, this RFP seeks information not directly related to Mr. Kretschman's written	This RFP is directly related to Dr. Kretschman's stated assumption that "[REDACTED]" listening to a particular catalog "[REDACTED]" as COs seek documents sufficient to how many Spotify subscribers fall under that stated assumption.	See e.g., Kretschman WRT ¶ 7 ([REDACTED])

	licensors. (<i>see e.g.</i> , Kretschman WRT at ¶ 7).	rebuttal testimony, and as such is outside the bounds of rebuttal discovery. Spotify will not produce documents.		[REDACTED].
Spotify R-59	Documents sufficient to show, on a monthly basis, the percentage of Spotify subscribers who have active streams of a single licensor's catalog (sound recordings or musical works) that are [REDACTED], broken down by the respective single licensors. (<i>see e.g.</i> , Kretschman WRT at ¶ 11, n.8).	This RFP is overbroad and unduly burdensome to the extent it requests information in a form not maintained in the ordinary course of business. Further, Spotify objects to the extent this RFP requests Spotify create new documents. Additionally, this seeks information not directly related to Mr. Kretschman's written rebuttal testimony, and as such is outside the bounds of rebuttal discovery. Spotify will not produce documents.	This RFP (which is similar to R-58) is directly related to Dr. Kretschman's employment of a [REDACTED]; COs seek documents sufficient to how many Spotify subscribers fall under that stated assumption.	<i>See e.g.</i> , Kretschman WRT ¶¶ 7, 11 n.8 ([REDACTED]).
Interrogatory 21	Identify each instance in which you have offered to consumers a discount plan or promotional discount	Spotify incorporates its General Objections, including with respect to Instructions and Definitions, as if fully set	Although Spotify, through meet-and-confer discussions, agreed to amend its response to this interrogatory, it indicated its amended answer will be limited	<i>See e.g.</i> , Kaefer WRT ¶ 52 ([REDACTED]).

	<p>for an Eligible Digital Music Service without obtaining agreement by all sound recording and musical work licensors to accept discounted royalties in connection with such discount plan or promotion, and the market share of licensors who did not agree to the discount plan or promotion.</p>	<p>forth herein. Spotify objects on the ground that this Interrogatory is vague, incoherent, and/or ambiguous. As such, Spotify is unable to respond to this Interrogatory as written. Spotify also objects to the extent this Interrogatory seeks information that is not directly related to Spotify’s written rebuttal statement. It further objects on the ground that the Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case. Spotify also objects on the grounds that this Interrogatory is compound. In light of the foregoing objections, Spotify will not respond to this Interrogatory.</p>	<p>to “[REDACTED]” However, as COs explained in response, this interrogatory concerns any “discount plan or promotional discount,” not just “[REDACTED]” Indeed, Spotify’s own submitted rebuttal testimony (to which COs directed Spotify) addresses [REDACTED].</p>	<p>[REDACTED]</p>
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EXHIBIT 7

Amazon Rebuttal Requests

In Amazon's R&Os and during Amazon's and COs' May 17, 2022 meet and confer, Amazon agreed to produce documents to the Rebuttal RFPs identified below. However, Amazon's has either produced no responsive documents, or a clearly deficient set of responsive documents, to the following Rebuttal RFPs:

Request No.	COs' Rebuttal RFP to Amazon
R-8	All Analysis concerning how any "[REDACTED]" (as the term is used in Leslie WRT ¶ 6) [REDACTED] in connection with Amazon Music.
R-11	All communications involving any "[REDACTED]" (as the term is used in Leslie WRT ¶ 6) concerning Amazon's [REDACTED] in connection with Amazon Music's, Prime Music's or Unlimited's [REDACTED] revenues, profits or losses. (See, e.g., Leslie WRT ¶¶ 6, 8, 14, 41)
R-12	All Documents concerning "[REDACTED]" including Documents in the custody of any [REDACTED] (See, e.g., Leslie WRT ¶ 18)
R-13	All Analysis communicated to any "[REDACTED]" (as the phrase is used in Leslie WRT ¶ 6) or to Amazon Music concerning Prime Music's Impact on the acquisition or retention of Prime members. (See, e.g., Leslie WRT; Hurwitz ¶ 52)
R-14	All Analysis concerning Amazon Music Free's Impact on the acquisition or retention of Prime members. (See, e.g., Hurwitz ¶ 52)
R-16	All communications concerning efforts to maintain or increase [REDACTED] (See, e.g., Leslie WRT ¶¶ 8, 23, 44, 71)
R-17	All Documents concerning Amazon's decision to [REDACTED] (See, e.g., Leslie WRT ¶¶ 53, 54)
R-18	All communications sent to or from James Duffett-Smith, or on which Mr. Duffett-Smith was copied or that he later received, concerning Amazon Music's [REDACTED] (See, e.g., Duffett-Smith WRT ¶ 70)
R-19	For each of the [REDACTED] numbers provided in Exhibits . . . 265, 267 . . . and 246 ¹ , Documents sufficient to show: (1) The underlying data used (including the dates from which such data was pulled); (2) The formula(s) used for each [REDACTED] (3) A breakdown of the number of Unlimited plan subscriptions by tier (including the number of Individual Plans, Family Plans, Student Plans and Single Device Plans) in each [REDACTED] data point; and (4) All types of promotional or discounted plans that are included in the [REDACTED] calculation (including Free Trial Offerings,

¹ Amazon agreed to provide the requested information in R-19 for only certain Amazon Exhibits, as reflected herein.

Request No.	COs' Rebuttal RFP to Amazon
	extended free trial Offerings, discounted plans, Bundles, [REDACTED] etc.).
R-20	All Analysis concerning the Impact of Amazon Music or any of its Services or Offerings on the sale of Amazon Devices, including Documents in the custody of Amazon's Devices or Alexa divisions. ² (See, e.g., Hurwitz WRT ¶¶ 5, 42)
R-23	All Analysis and communications concerning the decision to [REDACTED]. (See, e.g., Duffett-Smith WRT ¶¶ 54, 55)
R-26	All Documents and communications concerning the information Amazon provided in response to [REDACTED] as referred to in Duffett-Smith WRT ¶ 85, including any data withheld from such responses.
R-28	All Analysis concerning Amazon's decision to charge Prime members \$8.99/mo. for Unlimited. (See, e.g., Hurwitz WRT ¶¶ 26, 27, 28)
R-29	All Analysis concerning Amazon's decision to raise the Price of the Single Device Plan to \$4.99/mo. (See, e.g., Hurwitz WRT ¶¶ 26)
R-34	All documents concerning Amazon's policing of Family Plans. (See, e.g., Hurwitz WRT ¶¶ 18, 24)
R-36	All Amazon Agreements discussed in Hurwitz WRT ¶ 32, in connection with [REDACTED]
R-41	All correspondence between Amazon Music and any [REDACTED] in connection with the [REDACTED] that refers in any way to royalties payable for sound recordings or musical works. (See, e.g., Leslie WRT ¶ 29)
R-43	Documents sufficient to show Classical Archives' monthly U.S. Plays for each of Classical Archives' Services, broken down at every level of specificity for which records are maintained. (See Schwob WRT)
R-57	All Analysis concerning competition between Amazon Music products or services and any audiovisual streaming products or services. (See, e.g., Marx WRT ¶¶ 162-178)

² Amazon agreed to search for responsive documents to R-20 within its Devices division.

EXHIBIT 8

Apple Rebuttal Requests

Request No.	CO' Rebuttal Request to Apple
R-1	All Documents reflecting any Analysis or examination of the royalty rates agreed to under Apple's Publisher Agreements, including but not limited to any comparisons of those royalty rates with the current statutory rate or any proposed statutory rate.
R-2	All Documents reflecting any Analysis or examination [REDACTED]
R-3	All Documents reflecting any Analysis of Apple's [REDACTED]
R-4	All Documents concerning, supporting, evidencing, reflecting or underlying Your assertion on page 4 of the Introductory Memorandum of Your Written Rebuttal Statement ("WRS Intro.") that "under current margins, [REDACTED]"
R-6**	Documents sufficient to show . . . (b) the margins of Apple Music, and (c) the margins on the Apple One Bundle, for each accounting period during the Relevant Time Period.
R-7	All Documents, prepared by You, including by any Apple Inc. division, discussing or concerning the relationship between Apple Music and any other Apple Inc. products, services, Business strategies or Business line(s), including without limitation (i) any actual or planned use of music to drive revenue or value to Apple's hardware, device, or other non-music products, platforms or other Business lines, (ii) the actual, intended or potential impact of any Apple Music promotion, discount, trial, bundling, or pricing decision on the profits, revenues or margins of Apple Inc. or any Apple Inc. division or Business line other than Apple Music; and (iii) any benefit or value from Apple Music customer acquisition to any Apple Inc. division or Business line other than Apple Music.
R-8	All Documents concerning, supporting, evidencing, reflecting or underlying statements in Paragraphs 73 and 81-83 of the Segal WRT, Paragraphs 12 and 96 of the Prowse WRT, and Page 5 of the WDS Intro that Apple and/or other Services drive revenues to Copyright Owners through the Services' portable devices, headphones, smart speakers or platforms.
R-9	All Documents concerning any relationship between the pricing, discounting or bundling of Apple Music and Apple Music's market share.
R-10	All Documents concerning any reason for or against raising the Price(s) of Apple Music in light of the inclusion of Lossless Audio and/or Spatial Audio as referenced in the Segal WRT Paragraph 92.

Request No.	CO' Rebuttal Request to Apple
R-11	All Documents, Analyses, communications, examination, studies or memoranda concerning Apple Music subscriber [REDACTED] churn as referenced in Paragraphs 37 and 54 of the Segal WRT.
R-12	All Documents, Analyses, examinations, studies, memoranda or communications concerning any decision to provide Apple Music at a discounted or lower Price, or to include in Apple Music other features at no or low cost to the consumer, as a result of, in response to, or in connection with any decision made or expected to be made by another Service.
R-13**	Analyses performed by Apple with respect to revenue per-user for Apple Music.
R-16*	All Documents, Analyses, examinations, studies, memoranda or communications concerning the financial or monetary relationship between the Apple Music Voice Plan and the purchase or use of Siri-enabled devices.
R-18	All Documents, Analyses, examinations, studies, memoranda or communications concerning the reason(s) for the headphone and speaker promotions discussed in Paragraph 70 of the Segal WRT.
R-19*	Documents sufficient to identify the “taxes, carriage fees, in app fees [and] other distribution partner fees” paid by Apple in 2020 and 2021 and that Apple proposes to deduct from Service Provider Revenue, as referenced in Paragraph 118 of the Segal WRT.
R-20*	For each tax or fee listed in Paragraph 118 of the Segal WRT and identified in response to Request 19 above, Documents sufficient to show the amount of such tax or fee incurred by Apple during 2020 and 2021.
R-21	All Analysis conducted by Dr. Prowse of the “appropriate levels” at which to set all-in or mechanical only minima to “protect[] against revenue deferral and displacement” or other revenue mismeasurement as reference din Paragraph 7 and 54 of the Prowse WRT.
R-22	All Documents, Analyses, examinations, studies, memoranda or communications supporting Dr. Prowse’s claim in Paragraph 40 of the Prowse WRT that Apple’s purpose in offering the Apple Voice Plan is to capture a segment of the market that would otherwise not engage with paid streaming and/or that has a low willingness to pay for a music service.
R-24	All Documents concerning the [REDACTED] as referenced in Paragraphs 25 and 26 of the Segal WRT.
R-25*	Any U.S. analyses and relevant communications with record labels regarding the changes in headline sound recording rates in Apple’s label agreements and/or musical works royalties or rates.
R-26	All Analysis concerning addition or implementation of a HiFi or high quality audio tier to any of Your Eligible Digital Music Services.
R-27	Copies of all publications authored by Dr. Prowse concerning effective competition or Shapley analysis.
R-28	Copies of all past expert reports and testimony by Dr. Prowse concerning effective competition or Shapley analysis.

Request No.	CO' Rebuttal Request to Apple
R-30	All Analysis concerning supracompetitive pricing by Record Companies in the interactive streaming market.
R-31	All Analysis concerning "Label market power," as that term is used the Prowse WRT ¶ 137.
R-32	All Documents concerning any Shut Down Analysis.
Interrogatory 23*	Apple will produce a list of record labels that signed its click-through agreement.

*** Request is as modified by agreement of COs and Apple.**

**** Request is as limited by Apple.**

Note: Apple's May 18 production contained documents that appear to be responsive to RFPS R-14, R-15, R-17 and R-23. It thus appears that Apple has already complied with its agreement to produce documents responsive to those RFPs so they are not included in the above list of Requests as to which Apple has agreed to but has not yet produced.

EXHIBIT 9

In Pandora's responses and objections and during Spotify's and COs' meet and confer, Pandora agreed to produce documents responsive to the rebuttal RFPs identified below. However, Pandora has either produced no documents responsive, or a clearly deficient set of responsive document, to the following rebuttal RFPs to date.¹ Because the deadline to file Rebuttal Discovery Motions is May 24, COs hereby also move with respect to R-3 and R-5, as modified (in the case of R-5) during the meet and confer discussions. Should Pandora produce its documents responsive to these RFPs prior to the Board's determination of this Motion, or confirm that it has not located any documents responsive to these RFPs, COs will as appropriate advise the Board that the Motion is moot as respect to these RFPs.

Request No.	COs' Rebuttal RFPs to Pandora
R-3	All Analysis concerning the effect of royalties on Your margins.
R-5	All Analysis concerning willingness to pay for music. ²

¹ Pandora appears to have produced, to date, just 7 documents in response to the CO Rebuttal RFPs to Pandora.

² During the participants' meet and confer discussions, Pandora indicated that, for R-5, it would expand its the scope of its search to cover not only documents concerning "willingness to pay for Pandora's discounted plans or bundles," as it had agreed in the Pandora R&Os, but also documents concerning willingness to pay for Pandora's full-price offering (Premium). While Pandora recently produced two documents concerning certain promotional offers, those two documents are, at best, marginally responsive to R-5 and do not concern what Pandora specifically agreed to search for and produce.

EXHIBIT 10

In Spotify's responses and objections and during Spotify's and COs' meet and confer, Spotify agreed to produce documents responsive to the rebuttal RFPs and interrogatory identified below. However, Spotify has either produced no documents responsive, or a clearly deficient set of responsive documents, to the following rebuttal RFPs, and it has not yet amended its response to the below interrogatory (or to one other interrogatory addressed elsewhere in this Motion). Because the deadline to file Rebuttal Discovery Motions is May 24, COs hereby also move with respect to the requests and interrogatory identified below, as narrowed by COs during the meet and confer discussions. Should Spotify produce its documents responsive to these RFPs prior to the Board's determination of this Motion, or confirm that it has not located any documents responsive to these RFPs, and properly answer the below-identified interrogatory, COs will as appropriate advise the Board that the Motion is moot as respect to these discovery demands.

Request No.	COs' Rebuttal RFPs and Interrogatories to Spotify
R-3	All Analysis concerning the effect of royalties on Your margins.
R-4	Documents sufficient to show, on a monthly basis, under each of Your Agreements for the use of sound recordings, Agreements for payment of Performance Royalties, and Agreements for payment of Mechanical Royalties: (a) the amount of revenue You have allocated to the streaming of the recordings or musical works under the license, versus the amount of revenue You have allocated to other activities, content or sources; and (b) all methods You have used to make any such allocations.
R-10	All Analysis concerning Your competitors' Prices and of Prices You have considered even if You have not adopted those Prices. ¹
R-13	Documents sufficient to show all pricing of advertisements that appear on Your Offerings. ²
R-14	All Analysis concerning the Pricing of advertisements on Your Offerings. ³
R-17	Documents sufficient to identify, for each of Your Agreements with any Record Company, each month in which [REDACTED] bound for any Offering and the Offering(s) for which it bound.
R-19	All Analysis concerning Your agreement to pay royalties using formulas that involve [REDACTED].
R-20	All Documents concerning the reasons why Spotify [REDACTED] as described in Mr. Bonavia's rebuttal testimony.
R-21	All Documents concerning the reasons why Spotify and/or any other party to an Agreement with Spotify [REDACTED].

¹ For R-10, Spotify agreed to produce its Analysis concerning: [REDACTED]; Spotify's competitors' potential Pricing in response to a change in mechanical royalties; and, as set forth in the RFP as served, "Prices You have considered even if You have not adopted those Prices."

² For R-13 and R-14, Spotify agreed to produce all Analysis concerning [REDACTED].

³ See footnote 2, above.

R-26	Documents sufficient to identify, for each of Your Agreements [REDACTED], each month in which that prong bound for any Offering and the Offering(s) for which it bound.
R-27	All Analysis concerning the relationship between Your Prices and the rate structure of any of Your licenses, [REDACTED].
R-28	Documents sufficient to show Your average revenue per user (“ARPU”) for each Offering for each accounting period during the Relevant Time Period.
R-32	All Analysis concerning the effects of Spotify’s price increase described in paragraphs 55-56 of Mr. Kaefer’s testimony on Spotify’s subscribers, plays, revenues, profits or any other business metric. ⁴
R-35	All Analysis concerning how Spotify allocates advertising revenue between music and non-music content (e.g., podcasts) in connection with any Agreement with a Record Company.
R-36	Documents sufficient to show Spotify’s allocation of advertising revenue between music and non-music content (e.g., podcasts) in connection with Agreements with Record Companies.
R-41	All communications with any performing rights organization (PRO) regarding the ratio between performance and mechanical royalties.
R-43	All Analysis concerning [REDACTED] in any of Your Agreements with a Record Company.
R-44	All syllabi from classes taught by Prof. Farrell concerning effective competition, double marginalization, Shapley analysis or Nash bargaining analysis. ⁵
R-46	Copies of all past expert reports and testimony by Prof. Farrell concerning effective competition, double marginalization, Shapley analysis or Nash bargaining analysis. ⁶
R-47	Copies of all past publications, expert reports or testimony by Prof. Farrell concerning economic analysis to determine the existence of supracompetitive pricing. ⁷
R-48	All Analysis concerning supracompetitive pricing by Record Companies in the interactive streaming market.
R-51	All Analysis concerning the substitutability of music publisher catalogs in Spotify’s Eligible Digital Music Services.
R-52	All Analysis concerning the substitutability of sound recording catalogs in Spotify’s Eligible Digital Music Services.
R-55	All Documents concerning the “[REDACTED]” discussed in the Kretschman WRT (e.g., at ¶ 8), including but not limited to Documents concerning [REDACTED].

⁴ In the participants’ meet and confer correspondence, COs agreed to strike the words “or any other business metric” from this RFP.

⁵ For R-44, R-46 and R-47, in the participants’ meet and confer correspondence, Spotify agreed to search for and produce responsive documents to the extent they were “readily available, accessible, and not subject to a protective order.”

⁶ See footnote 5, above.

⁷ See footnote 5, above.

R-56	All Analysis concerning the Impact on Spotify of not having access to any particular sound recordings or musical works, whether at the individual, catalog or other level.
R-57	All Analysis concerning churn in connection with [REDACTED] (as that term is used in Kretschman WRT at ¶ 9).
Interrogatory 22	Identify and describe in detail the effective royalty rates that you pay for licenses to use sound recordings and musical works in Your music offerings (including those comparable to Eligible Digital Music Services) in each jurisdiction in which You do business, at every level of specificity reflected in Your records, including per play, per subscriber and as a percentage of revenue. ⁸

⁸ Spotify agreed to amend its response to this interrogatory to provide a complete answer. As noted elsewhere in this Motion, Spotify also indicated it would amend its response to Interrogatory 21 as well, but appears to have sought to limit its amended answer (not yet served on COs) such that it would omit material, discoverable information.

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of:

DETERMINATION OF RATES
AND TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(Phonorecords IV)

Docket No. 21–CRB–0001–PR (2023–2027)

**DECLARATION OF KAVERI ARORA
REGARDING RESTRICTED INFORMATION**

1. I am an attorney at Pryor Cashman LLP, counsel for the National Music Publishers’ Association (“NMPA”) and the Nashville Songwriters Association International (“NSAI” and, together with the NMPA, the “Copyright Owners”) in the above-captioned proceeding (the “Proceeding”).

2. Pursuant to Section IV.A of the Protective Order issued in the above-captioned Proceeding on July 20, 2021, as amended (the “Protective Order”), I submit this declaration in connection with the Copyright Owners’ Motion to Compel Production of Rebuttal Discovery Documents and Information from the Services (the “Motion”).

3. I have reviewed the Motion. I am also familiar with the definitions and terms set forth in the Protective Order. Each of the redactions made in the Statement is necessitated by the designation of one of the participants in this proceeding as “Confidential Information” under the Protective Order. Because the Copyright Owners are bound under the Protective Order to treat as “Restricted” and to redact information designated “Confidential Information” by participants, they

are doing so. Copyright Owners reserve all rights and arguments as to whether any such information is, in fact, “Confidential Information.”

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 24, 2022
New York, New York

/s/ Kaveri Arora

Kaveri Arora
(N.Y. Bar No. 5033253)
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Counsel for Copyright Owners

Proof of Delivery

I hereby certify that on Tuesday, May 24, 2022, I provided a true and correct copy of the Copyright Owners' Motion to Compel Production of Rebuttal Discovery Documents and Information from the Services [PUBLIC] to the following:

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

Pandora Media, LLC, represented by Benjamin E. Marks, served via E-Service at benjamin.marks@weil.com

Amazon.com Services LLC, represented by Joshua D Branson, served via E-Service at jbranson@kelloggghansen.com

Spotify USA Inc., represented by Joseph Wetzel, served via E-Service at joe.wetzel@lw.com

Johnson, George, represented by George D Johnson, served via E-Service at george@georgejohnson.com

Google LLC, represented by Gary R Greenstein, served via E-Service at ggreenstein@wsgr.com

Warner Music Group Corp., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Sony Music Entertainment, represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Zisk, Brian, represented by Brian Zisk, served via E-Service at brianzisk@gmail.com

Apple Inc., represented by Mary C Mazzello, served via E-Service at mary.mazzello@kirkland.com

UMG Recordings, Inc., represented by Steven R. Englund, served via E-Service at senglund@jenner.com

Joint Record Company Participants, represented by Susan Chertkof, served via E-Service at susan.chertkof@riaa.com

Signed: /s/ Benjamin K Semel